IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 368 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOLANKI RAMESHKUMAR PUNAJI NAGARJI

Versus

DIVISIONAL CONTROLLER G.S.R.T.C.

Appearance:

1. LETTERS PATENT APPEAL No. 368 of 1999

MR RV DESAI for Appellant No.

MRS VASAVDATTA BHATT for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This Letters Patent Appeal arises out of an order passed in Special Civil Application No.221 of 1993 on 1.11.1993, dismissing the Special Civil Application.

2. The petition was preferred by the petitioner on being aggrieved by the fact that the petitioner was denied compassionate appointment with the respondent-Corporation following demise of father of the petitioner. The denial was on the ground of delay in applying for compassionate appointment. The settlement required that such application has to be made within one year from the date of attaining majority, whereas the petitioner had applied beyond that period, i.e. late by five months and sixteen days beyond the period of one year. The learned Single Judge, following the decision of the Division Bench of this Court in Special Civil Application No.7441 of 1991, decided on June 22, 1993, rejected the petition, which has given rise to the present Letters Patent Appeal.

3. We have heard learned Advocate, Mr. R.V. Desai, for the appellant. The learned Advocate submitted that, in the instant case and in many other cases, heirs of deceased-employee may not be aware about the period of limitation and the respondent-Corporation should intimate them about their right and the period of limitation in order that the purpose behind the provions for compassionate appointment are followed in their true spirit. He was, however, not able to indicate any error, legal or otherwise, from the impugned order.

4. Learned Advocate, Mr. Desai, further submitted that the circular in question was issued on 11th April, 1990, which provided for the limitation of one year in place of two years, whereas the application was made on 1st May, 1990 and, therefore, the appellant was not aware about the change in provision. This is neither here nor there. The fact remains that the application is subsequent to the date of circular modifying the period of limitation and would be governed by the provisions made therein. The contention, therefore, cannot be accepted.

5. Considering the scope of Letters Patent Appeal, we find that no interference is called for at our hands in the impugned order. The learned Single Judge has followed the judgment of a Division Bench, which is clearly applicable to the facts of the present case. So far as the grievance made by learned Advocate Mr. Desai regarding intimation to the heirs of the deceased is

concerned, if the settlement does not provide, it cannot be read by the Court nor can it be deemed to have been provided, as it would amount to modifying the settlement or adding a clause in the settlement. This Court is required to examine the legality and propriety of the order in question and no illegality or impropriety having been found or indicated, the appeal must fail. The appeal stands dismissed, accordingly, with no order as to costs.

[B.J. SHETHNA, J.]

[A. L. DAVE, J.]

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